

# Flathead County

## Planning & Zoning

40 11th Street W Suite 220, Kalispell, MT 59901  
Telephone 406.751.8200 Fax 406.751.8210



### PETITION FOR ZONING AMENDMENT

*Submit this application, all required information, and appropriate fee (see current fee schedule) to the Planning & Zoning office at the address listed above.*

**FEE ATTACHED \$ 890.20 + 75.00**

#### **OWNER:**

1. Name: William and Beverly O'Brien Phone: (406) 270-8529
2. Mail Address: 688 Scenic Drive
3. City/State/Zip: Kalispell, MT 59901
4. Email: bobrien688@gmail.com
5. Interest in property (if map amendment): Owner

#### **APPLICANT:**

1. Name: Tim O'Brien Phone: (406) 270-9514
2. Mail Address: 684 Scenic Drive
3. City/State/Zip: Kalispell, MT 59901
4. Email: timomt730@gmail.com
5. Interest in property (if map amendment): \_\_\_\_\_

**Check which applies:**



Map Amendment



Text Amendment:

#### **TECHNICAL/PROFESSIONAL PARTICIPANTS:**

1. Name: Sands Surveying Inc. Attn: Donna Valade Phone: (406) 755-6481
2. Mailing Address: 2 Village Loop
3. City, State, Zip: Kalispell, MT 59901
4. Email: donna@sandssurveying.com

**IF THE REQUEST PERTAINS TO AN AMENDMENT TO THE TEXT OF THE ZONING REGULATIONS, PLEASE COMPLETE THE FOLLOWING:**

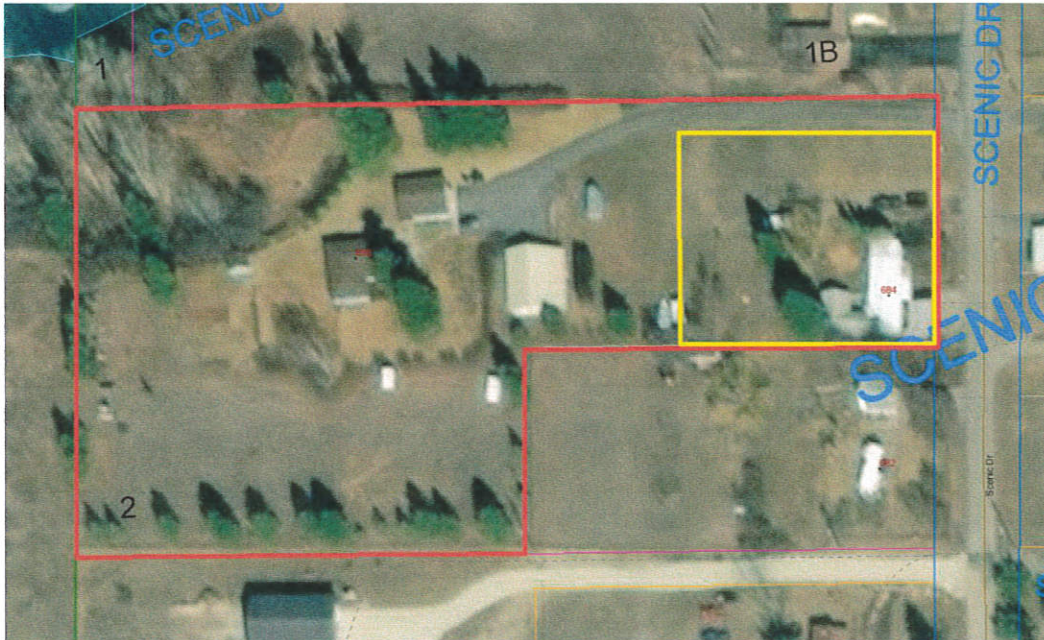
- A. What is the proposed zoning text/map amendment? N/A

**IF THE REQUEST PERTAINS TO AN AMENDMENT TO THE ZONING MAP PLEASE COMPLETE THE FOLLOWING:**

- A. Address of the property: 684 Scenic Drive, Kalispell
- B. Legal Description: Tract 2A of Scenic Tracts Tr W40' of S75' Lot 1  
(Lot/Block of Subdivision or Tract #)  
28 - T29N - R21W  
Section Township Range  
(Attach sheet for metes and bounds)
- C. Total acreage: 3.69 acres (0.72 acres proposed for R-2)

- D. Zoning District: Evergreen Zoning District
- E. The present zoning of the above property is: R-1 (Suburban Agricultural).
- F. The proposed zoning of the above property is: R-2 (One Family Ltd Residential) for 0.72 acres of the 3.69-acre lot
- G. State the changed or changing conditions that make the proposed amendment necessary: The owners of the property would like to gift the section of the property where their son currently resides, however the family transfer exemption is not an option due to the property being in a subdivision. With the current configuration of the existing structures on the property, it was not possible to subdivide the property and have both lots conform with the one-acre minimum lot size required with R-1. They would like to have the zoning in the portion of the lot where their son currently resides (0.72 acres) changed to R-2 with the remainder of the 3.69-acre lot (2.97 acres) remaining R-1 so the possibility of keeping a horse remains an option.

3.69-acre lot outlined in red, approximate proposed area for R-2 outlined in yellow



**THE FOLLOWING ARE THE CRITERIA BY WHICH ZONING AMENDMENTS ARE REVIEWED. PLEASE PROVIDE A RESPONSE AND *DETAILED* EXPLANATION FOR EACH CRITERION FOR CONSIDERATION BY THE PLANNING STAFF, PLANNING BOARD, AND COMMISSIONERS.**

1. Is the proposed amendment in accordance with the Growth Policy/Neighborhood Plan?



The O'Brien property is located within the boundary of the Flathead County Growth Policy. The Growth Policy Map identifies the property as "Residential". The Flathead County Growth Policy Map is not a future land use designation map that is traditionally used with a Growth Policy but an existing land use map that generally depicts the existing zoning categories as its base. The R-2 (One Family Limited Residential) designation is a land use category consistent with and generally conforms to the "Residential" designation.

The Flathead County Growth Policy identifies a number of Goals and Policies that support the proposed Map Amendment.

G.2 – Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.

*The subject property is located in an area where R-2 zoning is in close proximity both with lots in the Scenic Tracts subdivision as well as Silver Shadow Estates located 0.13 miles to the east.*

P.15.1 Encourage housing, employment, education and recreation to attract, support and maintain young families.

G.16 Safe housing that is available, accessible, and affordable for all sectors of the population.

P.16.3 Promote the development of affordable single and multi-family housing in areas of adequate service networks.

P.16.4 Consider the locational needs of various types of housing with regard to proximity of employment, access to transportation and availability of public services.

G.17 Encourage affordable homeownership in Flathead County

*The purpose of this proposed zone change is to allow the existing single-family dwellings on the lot to have their own lots. As this would allow a subdivision, it would provide housing and the potential to improve the housing which would support and maintain a young family, and provide affordable housing in an area with adequate service networks and transportation.*

G.8 – Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and welfare of neighbors and efficiently provide local services.

The proposed R-2 will allow a density of 1 residential unit with existing local services per 20,000 square feet (0.46 acres) and is similar to densities in the immediate area.

2. Is the proposed amendment designed to:

a. Secure safety from fire and other dangers? The subject property is within the Evergreen Fire District with a station on Highway 2 approximately 1.7 miles south of the property. The property is now located within the Wildland Urban Interface as is the rest of the valley floor however it is not within either a Fire District Priority Area or a Countywide Priority Area and the property is not mapped with 100-year floodplain nor is it located on steep slopes.

b. Promote public health, public safety and the general welfare? The property is accessed by Scenic Drive a paved, two-lane public road within a 60-foot easement. Scenic Drive is accessed by West Reserve Drive. The Flathead County Sheriff's Office provides police protection and the Evergreen Fire District provides fire and ambulance service to the existing and residences.

The proposed R-2 zoning classification provides similar setbacks, permitted lot coverage and height standards as the existing R-1 zone with the exception of 10 feet for the side yard setback instead of the 20 feet for R-1 and 30% permitted lot coverage instead of the 40% lot coverage allowed with R-1. They also have similar land use restrictions. The primary differences in the zoning districts are the density with the R-1 allowing one dwelling per acre and the R-2 allowing one dwelling per 20,000 square feet (0.46 acres) and the permitted uses of agricultural/horticultural/silvicultural, livestock, nursery, produce stand, and private stable. The differences in the Conditional Use category are R-1 provides for: airfield, aircraft hangars when in association with properties within or adjoining an airport/landing field, camp and retreat center, and caretaker's facility, while R-2 does not. The

proposed acreage for the zone change, 0.72 acres would not allow for further subdivision as the minimum lot size for R-2 is 20,000 square feet or 0.46 acres. The lot is currently developed with two single-family dwellings and accessory structures. The proposed zoning designation will continue to promote the health, safety and general welfare of the public.

- c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements? The property is accessed by Scenic Drive which is a paved, County maintained road. The proposed zone change would not allow additional lots to be created on the 0.72 acres. The subject property is currently developed with 2 single-family dwellings a two-car garage, accessory structures and shop. Since the lot already has two single family dwellings, there is no expected increase in traffic beyond what already exists. The goal of this zoning map amendment is to create an individual lot for each of the existing dwellings through subdivision review.

The property is within the Evergreen School District and Glacier High School for the 9-12th grades. During subdivision review the consideration of parkland will be evaluated and the amount of parkland needed would be determined by how many lots were created and if the applicant chose the alternative of cash-in-lieu for any possible parkland requirements.

3. Does the proposed amendment consider:

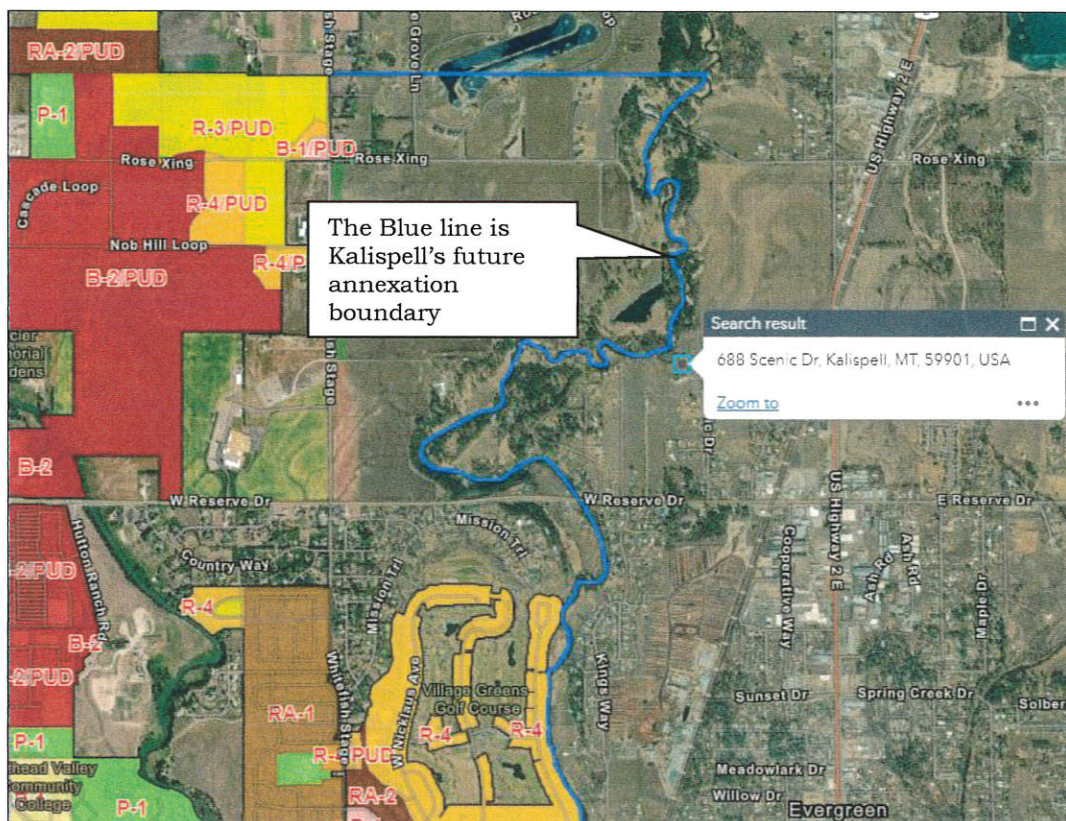
- a. The reasonable provision of adequate light and air? The proposed R-2 zoning designation has maximum lot coverage of 30% while R-1 has a maximum lot coverage of 40% and identical setbacks with the exception of a 10-foot side yard setback for R-2 as opposed to a 20-foot side yard setback for R-1 zoning. The proposed zoning designation will provide adequate light and air.
- b. The effect on motorized and non-motorized transportation systems? The subject parcel has direct access to Scenic Drive which is a paved County Road located within a 60-foot road right-of-way. The property is currently developed with 2 single-family dwellings which will be allowed to be on separate lots with subdivision review if this proposal is

approved. No increase in traffic is expected beyond what currently exists. No public bike or pedestrian trails are located near the subject property or proposed in the future.

- c. Compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities? The subject property is located 0.73 miles as the crow flies to the southwest in the Village Greens development and the property is just outside Kalispell's Annexation Boundary (Figure 1). The Residential zoning classification proposed on this property is compatible with the rural nature of the neighborhood and the neighboring Residential and Suburban Agricultural zoning.
- d. The character of the district and its peculiar suitability for particular uses? The subject parcel is adjacent to SAG-10 on the west, R-1 to the north, south and east with R-2 zoning located kitty-corner to the northeast and within 0.12 to the east and south. Within 0.4 miles of the property there is also B-2(EEO), I-1, I-1H, and I-2 zoning. Also, within three quarters of a mile there is City of Kalispell R-4 zoning which is a higher density (Figure 1 and 2).

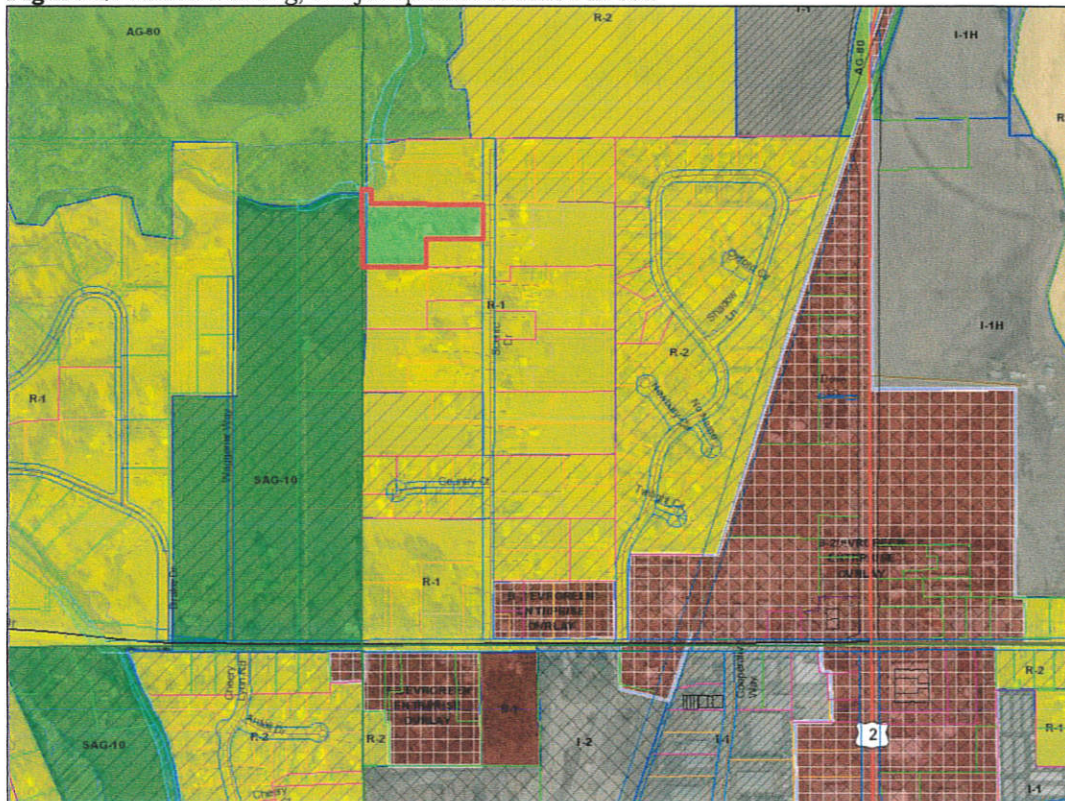


**Figure 1:** map of Kalispell's zoning and annexation map



Source – City of Kalispell Interactive Map

**Figure 2:** current zoning, subject parcel outlined in red



Considering the provisions of Spot Zoning and the “Three Part Test” as provided by legal precedent in Little vs. Board of County Commissioners. Spot Zoning is determined by the Court to be an illegal action if the request is found to meet **all** three of the tests. The three tests are as follows:

- i. *The zoning allows a use that differs significantly from the prevailing use in the area.*

The proposed R-2 zoning classification provides the similar setback, lot coverage and height standards as the existing R-1 zone with exception of 10 feet side yard setback instead of 20 for R-1 and a permitted lot coverage of 30% instead of 40% for R-1. The permitted uses of agricultural/horticultural/silvicultural, livestock, nursery, produce stand, and private stable are allowed in R-1 but not in R-2. The differences in the Conditional Use category are R-1 provides for: airfield, aircraft hangars when in association with properties within or adjoining an airport/landing field, camp and retreat center, and caretaker’s facility, while R-2 does not. The prevailing uses in the area are suburban residential, and farther to the east along Highway 2, commercial. Existing R-2 zoning is to the northeast across Scenic Drive and to the east and south of the subject property.

- ii. *The zoning applies to a small area or benefits a small number of separate landowners.*

The proposed zone change encompasses 3.69 acres and while the zoning benefits one lane owner, the property is situated with R-2 zoning located kitty-corner to the northeast and within 0.12 to the east and south.

- iii. *The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and this is in the nature of special legislation.*

The proposed zone change is for a single landowner however the proposed R-2 and the existing R-1 zoning are nearly identical except for the density and the ability to have agricultural/horticultural/silvicultural use. Existing R-2 zoning is



in place to the northeast, south, and east within close proximity and the existing uses in the area are residential.

As presented the proposed zone change application does not meet the three tests for “spot zoning” and therefore should be considered a legal request.

- e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area? The permitted and conditionally permitted uses of the proposed zoning designation of R-2 are similar to that of the existing R-1 zoning classification with the exception of agricultural/horticultural/silvicultural uses. The proposed R-2 with a density of one dwelling unit per 20,000 square feet (0.46 acres) is the same as property located within 0.12 miles to the south and east and across Scenic Drive to the northeast.

- 4. Is the proposed amendment, as nearly as possible, compatible with the zoning ordinances of nearby municipalities?


The City Limits of Kalispell is 0.73 miles as the crow flies to the southwest in the Village Greens development. Village Greens is zoned Kalispell R-4 which is residential allowing single-family and duplex dwellings utilizing public utilities with a minimum lot area of 6,000 square feet or 7 units per acre. The proposed zoning of R-2 allows one dwelling per 20,000 square feet (0.46 acres) or 2 units per acre. Kalispell R-4 zoning has smaller setbacks, larger lot coverage, higher allowed density and fewer permitted and conditional uses allowed.

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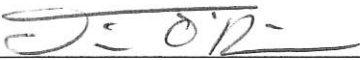
*The signing of this application signifies approval for the Flathead County Planning & Zoning staff to be present on the property for routine monitoring and inspection during approval process.*

  
Owner Signature – William O'Brien

11/12/2021  
Date

  
Owner Signature – Beverly O'Brien

11/12/2021  
Date

  
Applicant Signature - Tim O'Brien

11/12/2021  
Date



## **APPLICATION PROCESS**

### **APPLICABLE TO ALL ZONING APPLICATIONS:**

A. Pre-Application Meeting:

A pre-application meeting is highly recommended. This can be scheduled at no cost by contacting the Planning & Zoning office. Among topics to be discussed are: Master Plan compatibility with the application, compatibility of the proposed zone change with surrounding zoning classifications, and the application procedure.

B. Completed application.

C. Application fee.

D. The application must be accepted as complete by the Flathead County Planning & Zoning staff prior to the date of the planning board meeting at which it will be heard in order that requirements of state statutes and the zoning regulations may be fulfilled.

### **APPLICABLE TO APPLICATIONS FOR ZONE CHANGE:**

A. Application Contents:

1. Completed Zone Change application, including signatures of all property owners applying for zoning map amendment.

IF this is a **MAP** amendment the following are also required:

- i) A map showing the location and boundaries of the property (*vicinity map*).
- ii) A Title Report of the subject property
- iii) **Certified** Adjoining Property Owners List must be submitted with the application (*see forms below*). The list will be sent directly to the Planning & Zoning office, unless you request otherwise. This list is valid for a period of 6 months from date generated. You may also get a certified adjoining landowners list from a title company if you choose.